



Office of the Deputy Attorney General
Washington, D.C. 20530

July 24, 2019

The Honorable Nancy Pelosi
Speaker
House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

As you know, the President has asserted executive privilege and directed the Attorney General and the Secretary of Commerce not to release certain documents responsive to subpoenas issued by the Committee on Oversight and Reform in connection with its investigation into the Secretary's decision to include a citizenship question on the 2020 decennial census questionnaire. That directive was based on a legal opinion from the Department of Justice advising that it would be lawful to assert privilege. *See Letter for the President from William P. Barr, Attorney General (June 11, 2019).* As the Attorney General recognized, a federal court had held that many of those same documents were privileged from disclosure in civil litigation. The President's directive was issued after the Departments of Commerce and Justice had made multiple witnesses available to answer hours of the Committee's questions and produced more than 30,000 pages of documents in response to the Committee's demands.

Notwithstanding the Departments' efforts to accommodate the Committee's requests, and despite the President's directive, on June 12, 2019, the Committee adopted a resolution recommending that the House of Representatives cite the Attorney General and the Secretary of Commerce for contempt. On June 24, 2019, the Committee referred its report on the resolution to the full House. On July 17, 2019, the House adopted a contempt resolution, which you referred yesterday to the United States Attorney for the District of Columbia for prosecution for contempt of Congress under 2 U.S.C. §§ 192 and 194.

The Department of Justice's long-standing position is that we will not prosecute an official for contempt of Congress for declining to provide information subject to a presidential assertion of executive privilege. Across administrations of both political parties, we have consistently adhered to the position that "the contempt of Congress statute was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President's claim of executive privilege." *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102 (1984); *see also Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 356 (1995); *Whether the Department of Justice May Prosecute White House Officials for Contempt of Congress*, 32 Op. O.L.C. 65, 65–69 (2008); *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __, *14 (May 23, 2019).

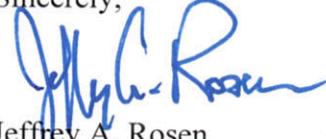
For instance, in 2008, the Department adhered to this position in declining to prosecute two White House officials, Joshua Bolten and Harriet Miers, who were the subject of a contempt of Congress referral from the House. After President George W. Bush directed Mr. Bolten and Ms. Miers not to release certain documents or provide related testimony subpoenaed by the Committee on the Judiciary, the House adopted a contempt resolution, which you referred for prosecution. Attorney General Michael Mukasey informed you that “the Department has determined that the non-compliance by Mr. Bolten and Ms. Miers with the Judiciary Committee subpoenas did not constitute a crime, and therefore the Department will not bring the congressional contempt citations before a grand jury or take any other action to prosecute Mr. Bolten or Ms. Miers.” Letter for Nancy Pelosi, Speaker, from Michael B. Mukasey, Attorney General at 2 (Feb. 29, 2008).

The Department took the same position in 2012 after President Barack Obama directed Attorney General Eric Holder not to release certain documents responsive to a subpoena in connection with the investigation of the Committee on Oversight and Government Reform into Operation Fast and Furious. After the House voted to hold Attorney General Holder in contempt of Congress for non-compliance with the subpoena, the Department informed Speaker John Boehner that “the Attorney General’s response to the subpoena issued by the Committee on Oversight and Government Reform does not constitute a crime, and therefore the Department will not bring the congressional contempt citation before a grand jury or take any other action to prosecute the Attorney General.” Letter for John A. Boehner, Speaker, from James M. Cole, Deputy Attorney General at 2 (June 28, 2012).

Consistent with this long-standing position and uniform practice, the Department has determined that the responses by the Attorney General and the Secretary of Commerce to the subpoenas issued by the Committee on Oversight and Reform did not constitute a crime, and accordingly the Department will not bring the congressional contempt citations before a grand jury or take any other action to prosecute the Attorney General or the Secretary.

Please do not hesitate to contact me if you would like to discuss this matter further.

Sincerely,



Jeffrey A. Rosen
Deputy Attorney General